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 others similarly situated*

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

MICHAEL P. KOBY, an individual;
 MICHAEL SIMMONS, an individual;
 JONATHAN W. SUPLER, an individual;
 DONALD NAPPI, an individual; on behalf of
 themselves and all others similarly situated,

Plaintiffs,

vs.

ARS NATIONAL SERVICES, INC., a
 California Corporation; and JOHN AND JANE
 DOES 1 through 25 inclusive,

Defendants.

CASE NO.: 3:09-cv-00780-KSC

**FIRST AMENDED CLASS ACTION
 COMPLAINT AND DEMAND FOR
 JURY TRIAL**

Plaintiffs, MICHAEL P. KOBY (“KOBY”), MICHAEL SIMMONS (“SIMMONS”),
 JONATHAN W. SUPLER (“SUPLER”), and DONALD NAPPI (“NAPPI”) (collectively,
 “Plaintiffs”) on behalf of themselves and all others similarly situated, by way of this Amended
 Complaint against the Defendants, say:

I. PARTIES

1. KOBY is a natural person.

2. At all times relevant to this complaint, KOBY is a citizen of Texas and resided in the City of Katy, Harris County, Texas.

3. SIMMONS is a natural person.

4. At all times relevant to this complaint, SIMMONS is a citizen of Washington and resided in the City of Monroe, Snohomish County, Washington.

5. SUPLER is a natural person.

6. At all times relevant to this complaint, SUPLER is a citizen of North Carolina and resided in the City of Raleigh, Wake County, North Carolina.

7. NAPPI is a natural person.

8. At all times relevant to this complaint, NAPPI is a citizen of Florida and resided in the City of Deerfield Beach, Broward County, Florida.

9. At all times relevant to this complaint, ARS NATIONAL SERVICES, INC. (“ARS”) is a for-profit corporation existing pursuant to the laws of the State of California. ARS maintains its principal business address at 201 West Grand Avenue, City of Escondido, San Diego County, California.

10. Defendants, JOHN AND JANE DOES 1 through 25 inclusive, are sued under fictitious names as their true names and capacities are yet unknown to Plaintiffs. Plaintiffs will amend this complaint by inserting the true names and capacities of these DOE defendants once they are ascertained.

II. JURISDICTION & VENUE

11. With respect to Plaintiffs’ claims under the FDCPA, jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

12. Supplemental jurisdiction for Plaintiffs’ state law claims arises under 28 U.S.C. § 1367.

13. Declaratory relief is available pursuant to under 28 U.S.C. §§ 2201, 2202.

1 member of her or his family.

2 17. The FDCPA regulates the behavior of collection agencies attempting to collect a
3 debt on behalf of another. The United States Congress has found abundant evidence of the use of
4 abusive, deceptive, and unfair debt collection practices by many debt collectors, and has
5 determined that abusive debt collection practices contribute to a number of personal bankruptcies,
6 marital instability, loss of jobs, and invasions of individual privacy. Congress enacted the FDCPA
7 to eliminate abusive debt collection practices by debt collectors, to ensure that those debt
8 collectors who refrain from using abusive debt collection practices are not competitively
9 disadvantaged, and to promote uniform State action to protect consumers against debt collection
10 abuses. 15 U.S.C. § 1692(a) - (e).

11 18. The FDCPA is a strict liability statute, which provides for actual or statutory
12 damages upon the showing of one violation. The Ninth Circuit has held that whether a debt
13 collector's conduct violates the FDCPA should be judged from the standpoint of the "least
14 sophisticated debtor." *Baker v. G.C. Services Corp.*, 677 F.2d 775, 778 (9th Cir. 1982).

15 19. To prohibit harassment and abuses by debt collectors the FDCPA, at 15 U.S.C.
16 § 1692d, provides that a debt collector may not engage in any conduct the natural consequence of
17 which is to harass, oppress, or abuse any person in connection with the collection of a debt and
18 names a non-exhaustive list of certain *per se* violations of harassing and abusive collection
19 conduct. 15 U.S.C. § 1692d(1)-(6). Among the *per se* violations is the placement of telephone
20 calls without meaningful disclosure of the caller's identity, 15 U.S.C. § 1692d(6).

21 20. To prohibit deceptive practices, the FDCPA, at 15 U.S.C. § 1692e, outlaws the use
22 of false, deceptive, and misleading collection letters and names a non-exhaustive list of certain
23 *per se* violations of false and deceptive collection conduct. 15 U.S.C. § 1692e(1)-(16). Among
24 these *per se* violations are: using any false representation or deceptive means to collect or attempt
25 to collect any debt or to obtain information concerning a consumer, 15 U.S.C. § 1692e(10); and
26 the failure by debt collectors to disclose in initial oral communications that the debt collector is
27 attempting to collect a debt and that any information obtained will be used for that purpose, and

1 the failure to disclose in subsequent oral communications with consumers that the communication
2 is from a debt collector, 15 U.S.C. § 1692e(11).

3 21. The RFDCPA regulates collection agencies and original creditors attempting to
4 collect debts on their own behalf. The California legislature has determined that the banking and
5 credit system and grantors of credit to consumers are dependent upon the collection of just and
6 owing debts and that unfair or deceptive collection practices undermine the public confidence that
7 is essential to the continued functioning of the banking and credit system and sound extensions of
8 credit to consumers. The California legislature has further determined that there is a need to
9 ensure that debt collectors exercise their responsibility with fairness, honesty, and due regard for
10 the debtor's rights and that debt collectors must be prohibited from engaging in unfair or
11 deceptive acts or practices.

12 22. The TDCPA, like the FDCPA, prohibits debt collectors from using deceptive,
13 coercive, threatening, abusive, and other repugnant practices for the purpose of collecting a
14 consumer debt. Tex. Bus. & Com. Code Ann § 17.50; *Cushman v. GC Services, L.P.*, 397 Fed.
15 Appx. 24 (5th Cir. 2010) (discussing the "tie-in" provision between the TDCPA and deceptive
16 practices Acts).

17 23. The FCCPA, like the FDCPA, prohibits debt collectors from using deceptive,
18 coercive, threatening, abusive, and other repugnant practices for the purpose of collecting a
19 consumer debt.

20 24. A Debt Collector means any person who uses any instrumentality of commerce
21 within this state, whether initiated from within or outside this state, in any business the principal
22 purpose of which is the collection of debts, or who regularly collects or attempts to collect, directly
23 or indirectly, debts owed or due or asserted to be owed or due another. The term "debt collector"
24 includes any creditor who, in the process of collecting her or his own debts, uses any name other
25 than her or his own which would indicate that a third person is collecting or attempting to collect
26 such debts. Fla. Stat. § 559.55(6).

27 25. To prohibit deceptive practices, the FCCPA, at Fla. Stat. § 559.72(7), prohibits Debt

1 Collectors from willfully communicating with the debtor or any member of her or his family with
2 such frequency as can reasonably be expected to harass the debtor or her or his family, or willfully
3 engage in other conduct which can reasonably be expected to abuse or harass the debtor or any
4 member of her or his family.

5 26. A person who suffers injury, loss, or damage, or from whom money was collected
6 by the use of a method, act, or practice in violation of the FCCPA may bring an action for actual
7 damages and for additional statutory damages of up to \$1,000, together with court costs and
8 reasonable attorney's fees incurred by the plaintiff. The court may also award punitive damages
9 and may provide such equitable relief as it deems necessary or proper, including enjoining the
10 defendant from further violations of the FCCPA. Fla. Stat. § 559.77(1),(2).

11 27. The Plaintiffs, on behalf of themselves and all others similarly situated, seek
12 statutory damages, attorney fees, costs, and all other relief, equitable or legal in nature, as deemed
13 appropriate by this Court, pursuant to the FDCPA, RFDCPA, TDCPA, and FCCPA. The
14 Plaintiffs, on behalf of themselves and all others similarly situated, request that they and the class
15 members be awarded statutory, common law, or actual damages payable by the Defendants.

16 28. This case involves money, property, or other equivalent, due or owing or alleged
17 to be due or owing from natural persons by reason of consumer credit transactions. As such, this
18 action arises out of “consumer debts” and “consumer credit” as those terms are defined by Cal.
19 Civ. Code § 1788.2(f).

20 29. This case involves an obligation, or an alleged obligation, primarily for personal,
21 family, or household purposes, and arising from a transaction or alleged transaction. As such, this
22 action arises out of “consumer debt” as that term is defined by Tex. Fin. Code § 392.001(2).

23 30. This case involves an obligation or alleged obligation of a consumer to pay money
24 arising out of a transaction in which the money, property, insurance, or services which are the
25 subject of the transaction are primarily for personal, family, or household purposes. As such, this
26 action arises out of the collection of a “debt” or “consumer debt” as those terms are defined by
27 Fla. Stat. § 559.55(1).

IV. FACTS REGARDING KOBY

31. KOBY is informed and believes, and on that basis alleges, that sometime prior to September 2008 he allegedly incurred a financial obligation to Capital One Bank (USA), N.A. arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and defaulted on that obligation ("Koby Obligation").

32. KOBY is informed and believes, and on that basis alleges, that sometime prior to September 2008, the creditor of the Koby Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to ARS for collection.

V. FACTS REGARDING SIMMONS

33. SIMMONS is informed and believes, and on that basis alleges, that sometime prior to April 2009 he allegedly incurred a financial obligation arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and defaulted on that obligation ("Simmons Obligation").

34. SIMMONS is informed and believes, and on that basis alleges, that sometime prior to April 2009, the creditor of the Simmons Obligation either directly or through intermediate transactions assigned, placed, transferred, or sold the debt to ARS for collection.

35. To date, SIMMONS has not received any written communications from ARS.

VI. FACTS REGARDING SUPLER

36. SUPLER is informed and believes, and on that basis alleges, that sometime prior to December 2008 he allegedly incurred a financial obligation to Chase Bank USA, N.A. arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes and defaulted on that obligation ("Supler Obligation").

37. SUPLER is informed and believes, and on that basis alleges, that sometime prior to December 2008, the creditor of the Supler Obligation either directly or through intermediate

1 transactions assigned, placed, transferred, or sold the debt to ARS for collection.

2 **VII. FACTS REGARDING NAPPI**

3 38. NAPPI is informed and believes, and on that basis alleges, that sometime prior to
4 May 2009 he allegedly incurred a financial obligation arising out of a transaction in which the
5 money, property, insurance, or services which are the subject of the transaction are primarily for
6 personal, family, or household purposes and defaulted on that obligation (“Nappi Obligation”).

7 39. NAPPI is informed and believes, and on that basis alleges, that sometime prior to
8 May 2009, the creditor of the Nappi Obligation either directly or through intermediate
9 transactions assigned, placed, transferred, or sold the debt to ARS for collection.

10 40. To date, NAPPI has not received any written communications from ARS.

11 **VIII. FACTS COMMON TO ALL PLAINTIFFS**

12 41. ARS collects, and attempts to collect, debts incurred, or alleged to have been
13 incurred, for personal, family, or household purposes on behalf of creditors using interstate
14 commerce or the mails.

15 42. Within the one year immediately preceding the commencement of this action,
16 ARS contacted each of the Plaintiffs via telephone in an attempt to collect their respective alleged
17 debts.

18 43. Within the one year immediately preceding the commencement of this action, each
19 of the Plaintiffs received from ARS at least one telephonic voice message (“Messages”).

20 44. Each of the Messages was left, or caused to be left, by persons employed by ARS
21 in connection with ARS’s attempt to collect a debt.

22 45. Each of the Messages uniformly failed to:

- 23 (a) Provide meaningful disclosure of ARS’s identity as the caller;
24 (b) Disclose that the communication was from a debt collector; and
25 (c) Disclose the purpose or nature of the communication (i.e., an attempt
26 to collect a debt).

27 46. An example of four such Messages are transcribed as follows:

1 This is Robin calling for Michael Koby, if you could return my call
2 at 800-440-6613; my direct extension is 3171. Please refer to your
Reference Number as 15983225. [Received October 14, 2008].

3 Hey John, uh, it's Mike Mazzouli with ARS National. Umm, there
4 appears to be some documents here in my office, uh, John at this
point your involved. Call me as soon as you can. My direct number
5 and direct extension is 800-440-6613; I'm at extension 3697. Thank
you. [Received on or about December 23, 2008].

6 This is Brian Cooper. This call is for Mike Simmons, I need you to
7 return this call as soon as you get this message 877-333-3880,
extension 2571. [Received on April 9, 2009].

9 This message is for Donald Nappi. Donald, this is James Kennedy
10 please return my call today, May 12th. My number is 800-900-1148
extension 5315. James Kennedy calling for Donald Nappi please
11 return this call today, 800-900-1148 extension 5315. [Received on
May 12, 2009].

12 47. The Messages left for KOBY were at his home in Katy, Texas using his home
13 telephone number which begins with a **281** area code.

14 48. The Messages left for SIMMONS were at his parents' home using their home
15 telephone number which begins with **425** area code.

16 49. The Messages left for SUPLER were at his home using his home telephone
17 number which begins with a **919** area code.

18 50. The Messages left for NAPPI were on his cell phone in Florida using his cellular
19 telephone number which begins with a **954** area code

20 51. Each of the Messages is false, deceptive, and misleading in that the natural
21 consequence of these communications is to harass, oppress, or abuse the least sophisticated
22 consumer and other persons.

23 52. Each of the Messages is false, deceptive, and misleading insofar as ARS failed to
24 provide meaningful disclosure of its identity, disclose the purpose of its call, or disclose that ARS
25 is a debt collector, thereby frustrating the Plaintiffs' ability to make an informed decision as to
26 whether they wished to speak with a debt collector.

27 53. The Plaintiffs are informed and believe, and on that basis allege, that Defendants,

1 JOHN AND JANE DOES 1 through 25 inclusive, are natural persons and/or business entities all
 2 of whom reside or are located within the United States who personally created, instituted and,
 3 with knowledge that such practices were contrary to law, acted consistent with and oversaw
 4 policies and procedures used by the employees of ARS that are the subject of this complaint.
 5 Those Defendants personally control the illegal acts, policies, and practices utilized by ARS and,
 6 therefore, are personally liable for all of the wrongdoing alleged in this Complaint.

7 **IX. POLICIES AND PRACTICES COMPLAINED OF**

8 54. It has been Defendants' policy and practice to leave telephonic voice messages for
 9 consumers and other persons, such as the Messages, that uniformly fail to:

- 10 (a) Provide meaningful disclosure of ARS's identity as the caller;
- 11 (b) Disclose that the communication is from a debt collector; and
- 12 (c) Disclose the purpose or nature of the communication.

13 **X. CLASS ALLEGATIONS**

14 55. This action is brought as a class action. Plaintiffs bring this action on behalf of
 15 themselves and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal
 16 Rules of Civil Procedure.

17 56. Subject to discovery and further investigation which may cause Plaintiffs to
 18 modify the following class definition to be more inclusive or less inclusive, Plaintiffs define the
 19 "Class" as: Subject to the exclusions in ¶57, the Class consists of all persons to whom ARS
 20 placed a telephone call during the Class Period in an attempt to collect a debt using a telephone
 21 number containing a 281, 425, 919, or 954 area code and left a voice message which failed to
 22 state either (i) ARS National Services, Inc. was the caller, (ii) the communication was from a debt
 23 collector, (iii) the purpose or nature of the communication, or (iv) the call was placed in an
 24 attempt to collect a debt and any information obtained would be used for that purpose. The "Class
 25 Period" is the continuous period beginning on **April 15, 2008** (the date which begins the one year
 26 preceding the commencement of this action) and continuing through and including **May 20, 2009**
 27 (the date ARS first appeared in this action).

1 57. Excluded from the Class are persons who, prior to the date this action is certified
2 to proceed as a class action, either:

- 3 (a) died,
4 (b) obtained a discharge in bankruptcy,
5 (c) commenced an action in any court against Defendant alleging a violation of
6 the Fair Debt Collection Practices Act,
7 (d) signed a general release of claims against Defendant, or
8 (e) is a Judge assigned to this case or a member of such Judge's staff or
9 immediate family.

10 58. The identities of the members of the Class are readily ascertainable from the
11 records of ARS and those companies and governmental entities on whose behalf ARS attempts to
12 collect debts.

13 59. Subject to discovery and further investigation which may cause Plaintiffs to
14 modify the following class definition to be more inclusive or less inclusive, Plaintiffs define the
15 **281-Subclass** as those members of the Class to whom ARS placed a telephone call using a
16 telephone number containing a 281 area code.

17 60. Subject to discovery and further investigation which may cause Plaintiffs to
18 modify the following class definition to be more inclusive or less inclusive, Plaintiffs define the
19 **954-Subclass** as those members of the Class to whom ARS placed a telephone call using a
20 telephone number containing a 954 area code.

21 61. Subject to discovery and further investigation which may cause Plaintiff to modify
22 the following definition of the "Class Claims" to be more inclusive or less inclusive, Plaintiff
23 defines the Class Claims as claims arising under the FDCPA, RFDCPA, TDCPA, and FCCPA
24 based on ARS leaving a voice message for a person in an attempt to collect a debt which message
25 failed to state either (i) ARS National Services, Inc. was the caller, (ii) the communication was
26 from a debt collector, (iii) the purpose or nature of the communication, or (iv) the call was placed
27 in an attempt to collect a debt and any information obtained would be used for that purpose.

62. Based on discovery and further investigation (including, but not limited to, Defendants' disclosure of class size and net worth), Plaintiff may, in addition to moving for class certification using modified definitions of the Class and Class Claims, seek class certification only as to particular issues as permitted under Fed. R. Civ. P. 23(c)(4).

63. There are questions of law and fact common to the Class, which common issues predominate over any issues involving only individual class members. Those principal issues are: whether the Defendants' telephonic voice messages, such as the Messages, violate 15 U.S.C. §§ 1692d(6), 1692e(10), and 1692e(11).

64. The Plaintiffs' claims are typical of the class members, as all are based upon the same facts and legal theories.

65. The Plaintiffs will fairly and adequately protect the interests of the Class and Sub-Classes defined in this Complaint. The Plaintiffs have retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiffs nor their attorneys have any interests, which might cause them not to vigorously pursue this action.

66. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

- (a) **Numerosity:** The Plaintiffs are informed and believe, and on that basis allege, that the Plaintiff Class defined above is so numerous that joinder of all members would be impractical and contain at least 40 members.
- (b) **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Class and those questions predominate over any questions or issues involving only individual class members. The principal issues are: whether the Defendants' telephonic voice messages, such as the Messages, violate 15 U.S.C. §§ 1692d(6), 1692e(10), and 1692e(11).
- (c) **Typicality:** The Plaintiffs' claims are typical of the claims of the class members. The Plaintiffs and all members of the Class have claims arising out

1 of Defendants' common uniform course of conduct complained of herein.

2 (d) **Adequacy:** The Plaintiffs will fairly and adequately protect the interests of the
 3 class members insofar as Plaintiffs have no interests that are averse to the
 4 absent class members. The Plaintiffs are committed to vigorously litigating
 5 this matter. Plaintiffs have also retained counsel experienced in handling
 6 consumer lawsuits, complex legal issues, and class actions. Neither the
 7 Plaintiffs nor their counsel have any interests which might cause them not to
 8 vigorously pursue the instant class action lawsuit.

9 (e) **Superiority:** A class action is superior to the other available means for the fair
 10 and efficient adjudication of this controversy because individual joinder of all
 11 members would be impracticable. Class action treatment will permit a large
 12 number of similarly situated persons to prosecute their common claims in a
 13 single forum efficiently and without unnecessary duplication of effort and
 14 expense that individual actions would engender. An important public interest
 15 will be served by addressing the matter as a class action, substantial expenses
 16 to the litigants and to the judicial system will be realized, and the potential
 17 inconsistent or contradictory adjudications will be avoided as contemplated by
 18 Rule 23(b)(1) of the Federal Rules of Civil Procedure.

19 67. Certification of a class or sub-class under Rule 23(b)(2) of the Federal Rules of
 20 Civil Procedure is appropriate in that, if a determination is made that Defendants' telephonic
 21 voice messages for Texas consumers violate the TDCPA, KOBV and the 281-Subclass would be
 22 permitted to obtain injunctive relief pursuant to Tex. Fin. Code § 392.403(a)(1).

23 68. Certification of a class or sub-class under Rule 23(b)(2) of the Federal Rules of
 24 Civil Procedure is also appropriate in that, if a determination is made that Defendants'
 25 standardized telephonic voice messages for Florida consumers violate the FCCPA, NAPPI and
 26 the 954-Subclass would be permitted to obtain injunctive relief pursuant to Fla. Stat. § 559.77(2).

27 69. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil Procedure

1 is also appropriate in that:

- 2 (a) The questions of law and fact common to members of the Class and Sub-
- 3 Classes predominate over any questions affecting an individual member; and
- 4 (b) A class action is superior to other available methods for the fair and efficient
- 5 adjudication of the controversy.

6 70. Depending on the outcome of further investigation and discovery, Plaintiffs may,
 7 at the time of their class certification motion: (i) seek to modify the definition of the Class and
 8 Sub-Classes (defined *supra*) to be more inclusive or less inclusive; seek to modify the definitions
 9 of the Class and Sub-Class claims (defined *supra*) to be more/less inclusive; and/or (iii) seek
 10 certification only as to particular issues as permitted under Fed. R. Civ. P. 23(c)(4).

11 **XI. FIRST CAUSE OF ACTION**
 12 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**
 13 **(AGAINST ALL DEFENDANTS)**

14 71. Plaintiffs reallege and incorporate by reference the allegations in the preceding
 15 paragraphs of this Amended Complaint.

16 72. The alleged Koby Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

17 73. KOBY is, at all times relevant to this complaint, a “consumer” as that term is
 18 defined by 15 U.S.C. § 1692a(3).

19 74. The alleged Simmons Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

20 75. SIMMONS is, at all times relevant to this complaint, a “consumer” as that term is
 21 defined by 15 U.S.C. § 1692a(3).

22 76. The alleged Supler Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

23 77. SUPLER is, at all times relevant to this complaint, a “consumer” as that term is
 24 defined by 15 U.S.C. § 1692a(3).

25 78. The alleged Nappi Obligation is a “debt” as defined by 15 U.S.C. §1692a(5).

26 79. NAPPI is, at all times relevant to this complaint, a “consumer” as that term is
 27 defined by 15 U.S.C. § 1692a(3).

1 80. ARS is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

2 81. Each of the Messages is a “communication” as defined by 15 U.S.C. § 1692a(2).

3 82. By placing each telephone call and leaving the Messages, Defendants violated the
4 FDCPA. Such violations include, but are not limited to, the following:

5 (a) Engaging in conduct the natural consequence of which is to harass, oppress,
6 or abuse any person in connection with the collection of a debt in violation of
7 15 U.S.C. § 1692d;

8 (b) Placing telephone calls without providing meaningful disclosure of ARS’s
9 identity as the caller in violation of 15 U.S.C. § 1692d(6);

10 (c) Leaving telephonic voice messages which fail to disclose the purpose or
11 nature of the communication, i.e., an attempt to collect a debt, in violation of
12 15 U.S.C. § 1692d(6);

13 (d) Leaving telephonic voice messages for consumers, which use false, deceptive,
14 or misleading representations or means in connection with the collection of
15 any debt in violation of 15 U.S.C. §§ 1692e and 1692e(10);

16 (e) Leaving telephonic voice messages for consumers, which use false,
17 deceptive, or misleading representations or means to obtain information
18 concerning a consumer in violation of 15 U.S.C. §§ 1692e and 1692e(10);

19 (f) Failing to disclose in its initial communication with the consumer, when that
20 communication is oral, that ARS is attempting to collect a debt and that any
21 information obtained will be used for that purpose, which constitutes a
22 violation of 15 U.S.C. § 1692e(11); and

23 (g) Failing to disclose in all oral communications that ARS is a debt collector in
24 violation of 15 U.S.C. § 1692e(11).

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1 **XII. SECOND CAUSE OF ACTION**
2 **VIOLATIONS OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**
3 **(AGAINST ALL DEFENDANTS)**

4 83. Plaintiffs reallege and incorporate by reference the allegations in the preceding
5 paragraphs of this Amended Complaint.

6 84. ARS is, at all times relevant to this complaint, engaged in the act and/or practice of
7 “debt collection” as that term is defined by Cal. Civ. Code §1788.2(b).

8 85. ARS is, at all times relevant to this complaint, a “debt collector” as defined by Cal.
9 Civ. Code §1788.2(c).

10 86. Each of the Messages was left in connection with the collection of a “debt” as
11 defined by Cal. Civ. Code § 1788.2(d).

12 87. Each of the Messages was left by, or caused to be left by, persons employed by
13 ARS as a “debt collector” as defined by Cal. Civ. Code § 1788.2(c).

14 88. The alleged Koby Obligation is a “debt” as defined by Cal. Civ. Code §1788.2(d).

15 89. KOBY is, at all times relevant to this complaint, a “person” as that term is defined
16 by Cal. Civ. Code §1788.2(g).

17 90. KOBY is, at all times relevant to this complaint, a “debtor” as that term is defined
18 by Cal. Civ. Code §1788.2(h).

19 91. The alleged Simmons Obligation is a “debt” as defined by Cal. Civ. Code
20 §1788.2(d).

21 92. SIMMONS is, at all times relevant to this complaint, a “person” as that term is
22 defined by Cal. Civ. Code §1788.2(g).

23 93. SIMMONS is, at all times relevant to this complaint, a “debtor” as that term is
24 defined by Cal. Civ. Code §1788.2(h).

25 94. The alleged Supler Obligation is a “debt” as defined by Cal. Civ. Code §1788.2(d).

26 95. SUPLER is, at all times relevant to this complaint, a “person” as that term is
27 defined by Cal. Civ. Code §1788.2(g).

1 96. SUPLER is, at all times relevant to this complaint, a “debtor” as that term is
2 defined by Cal. Civ. Code §1788.2(h).

3 97. The alleged Nappi Obligation is a “debt” as defined by Cal. Civ. Code §1788.2(d).

4 98. NAPPI is, at all times relevant to this complaint, a “person” as that term is defined
5 by Cal. Civ. Code §1788.2(g).

6 99. NAPPI is, at all times relevant to this complaint, a “debtor” as that term is defined
7 by Cal. Civ. Code §1788.2(h).

8 100. Each of the Messages is a “communication” as defined by 15 U.S.C. § 1692a(2).

9 101. By placing each telephone call and leaving the Messages, Defendants violated the
10 RFDCPA. Such violations include, but are not limited to, the following:

11 (a) Placing telephone calls without providing meaningful disclosure of ARS’s
12 identity as the caller in violation of Cal. Civ. Code § 1788.11(b); and

13 (b) Leaving telephonic voice messages for Plaintiffs in an attempt to collect a
14 debt, whereby the Defendants violated 15 U.S.C. § 1692, *et seq.*, as set forth
15 above in Plaintiffs’ First Cause of Action and is, therefore, also a violation of
16 Cal. Civ. Code § 1788.17.

17 **XIII. THIRD CAUSE OF ACTION**

18 **VIOLATIONS OF THE TEXAS DEBT COLLECTION PRACTICES ACT**

19 **(AGAINST ALL DEFENDANTS)**

20 102. Plaintiffs reallege and incorporate by reference the allegations in the preceding
21 paragraphs of this Amended Complaint.

22 103. ARS is, at all times relevant to this complaint, engaged in the act and/or practice of
23 “debt collection” as that term is defined by Tex. Fin. Code § 392.001(5).

24 104. ARS is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

25 105. ARS is, at all times relevant to this complaint, a “debt collector” as that term is
26 defined by Tex. Fin. Code § 392.001(6).

27 106. ARS is, at all times relevant to this complaint, a “third-party debt collector” as that

1 term is defined by Tex. Fin. Code § 392.001(7).

2 107. ARS is, at all times relevant to this complaint, engaged in the act and/or practice of
3 “debt collection” as that term is defined by Tex. Fin. Code § 392.001(5).

4 108. The alleged Koby Obligation is a “consumer debt” as defined by Tex. Fin. Code
5 § 392.001(2).

6 109. Each of the Messages was left in connection with the collection of a “consumer
7 debt” as defined by Tex. Fin. Code § 392.001(2).

8 110. KOBY is, at all times relevant to this complaint, a “consumer” as that term is
9 defined by Tex. Fin. Code § 392.001(1).

10 111. Each of the Messages was left by, or caused to be left by, persons employed by
11 ARS as a “debt collector” as that term is defined by Tex. Fin. Code § 392.001(6).

12 112. Each of the Messages was left by, or caused to be left by, persons employed by
13 ARS as a “third-party debt collector” as that term is defined by Tex. Fin. Code § 392.001(7).

14 113. By placing each telephone call and leaving the Messages, Defendants violated the
15 TDCPA. Such violations include, but are not limited to, the following:

- 16 (a) Failing to disclose in its initial communication with the consumer, when the
17 communication is oral, that ARS is attempting to collect a debt and that any
18 information obtained will be used for that purpose, which constitutes a
19 violation of Tex. Fin. Code § 392.304(5)(A);
- 20 (b) Failing to disclose in subsequent oral communications that ARS is a debt
21 collector in violation of Tex. Fin. Code § 392.304(5)(B);
- 22 (c) Leaving telephonic voice messages in an attempt to collect a debt, wherein
23 Defendants violated 15 U.S.C. §§ 1692e, 1692d, and subsections thereof, as
24 set forth above in Plaintiff’s First Cause of Action, which is, therefore, also a
25 violation of Tex. Fin. Code § 392.304(19).

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XIV. FOURTH CAUSE OF ACTION
VIOLATIONS OF THE FLORIDA CONSUMER COLLECTION PRACTICES ACT
(AGAINST ALL DEFENDANTS)

114. Plaintiffs reallege and incorporate by reference the allegations in the preceding paragraphs of this Amended Complaint.

115. ARS is, at all times relevant to this complaint, engaged in the business of soliciting consumer debts for collection and/or collecting consumer debts and, therefore, is a “Consumer Collection Agency” as that term is defined by 15 Fla. Stat. § 559.55(7).

116. ARS is a “debt collector” as defined by Fla. Stat. § 559.55(6).

117. The alleged Nappi Obligation is a “debt” as defined by Tex. Fin. Code § 392.001(2).

118. Each of the Messages was left in connection with the collection of a “debt” as defined by Fla. Stat. § 559.55(1).

119. NAPPI is, at all times relevant to this complaint, a “consumer” as that term is defined by Fla. Stat. § 559.55(2).

120. NAPPI is, at all times relevant to this complaint, a “debtor” as that term is defined by Fla. Stat. § 559.55(2).

121. Each of the Messages was left by, or caused to be left by, persons employed by ARS as a “debt collector” as defined by Fla. Stat. § 559.55(6).

122. Each of the Messages is a “communication” as defined by Fla. Stat. § 559.55(5).

123. By placing each telephone call and leaving the Messages, Defendants violated the FCCPA. Such violations include, but are not limited to, the following:

- (a) Willfully making false, deceptive, and misleading statements, which conduct can reasonably be expected to abuse or harass the debtor or any member of her or his family in violation of Fla. Stat. § 559.72(7); and
- (b) Willfully engaging in conduct which can reasonably be expected to abuse or harass the debtor or any member of her or his family in violation of Fla. Stat.

§ 559.72(7).

XV. PRAYER FOR RELIEF

124. WHEREFORE, Plaintiffs respectfully request the Court enter judgment in their favor and in favor of the Class and Sub-Classes as follows:

A. For the FIRST CAUSE OF ACTION:

- (i) An order certifying that the First Cause of Action may be maintained as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiffs and the undersigned counsel to represent the Plaintiff Class as previously set forth and defined above;
- (ii) An award of statutory damages for the Plaintiffs and the Class pursuant to 15 U.S.C. § 1692k(a)(B);
- (iii) Declaratory relief adjudicating that the Defendants' telephone messages violate the FDCPA;
- (iv) Attorney's fees, litigation expenses, and costs pursuant to 15 U.S.C. § 1692k(a)(B)(3); and
- (v) For such other and further relief as may be just and proper.

B. For the SECOND CAUSE OF ACTION:

- (i) An order certifying that the Second Cause of Action may be maintained as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointing Plaintiffs and the undersigned counsel to represent the Class as previously set forth and defined above.
- (ii) An award of the maximum statutory damages for Plaintiffs and the Class pursuant to Cal. Civ. Code §1788.30(b);
- (iii) Declaratory relief adjudicating that ARS's telephone messages violate the RFDCPA;
- (iv) Attorney's fees, litigation expenses, and costs pursuant to Cal. Civ. Code §1788.30(c), Cal. Code Civ. Proc. § 1021.5, and/or under the substantial benefit and common fund doctrine in an amount to be determined at trial; and

(v) For such other and further relief as may be just and proper.

C. For the THIRD CAUSE OF ACTION:

(i) An order certifying that the Third Cause of Action may be maintained as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure and Tex. Fin. Code § 392.403(a), and appointing KOBY and the undersigned counsel to represent the 281-Subclass as set forth and defined above;

(ii) An award of statutory damages for KOBY and the 281-Subclass, pursuant to Tex. Fin. Code § 392.403(e), in an amount to be determined at trial, for each of Defendants' violations of Tex. Fin. Code § 392.101;

(iii) For injunctive relief for KOBY and the 281-Subclass, pursuant to Tex. Fin. Code § 392.403(a)(1), including enjoining Defendants from engaging in further violations of Chapter 392 of the Texas Finance Code as complained of herein;

(iv) For declaratory relief pursuant to 28 U.S.C. §§ 2201, 2202 adjudicating that Defendants' collection conduct complained of herein violates the TDCPA;

(v) An incentive award for KOBY, in connection with her services on behalf of the 281-Subclass, in an amount to be determined by the Court after judgment is entered in their favor;

(vi) Attorney's fees, litigation expenses, and costs pursuant to Tex. Fin. Code § 392.403(b); and

(vii) For such other and further relief as may be just and proper.

D. For the FOURTH CAUSE OF ACTION:

(i) An order certifying that the Fourth Cause of Action may be maintained as a class pursuant to Rule 23 of the Federal Rules of Civil Procedure and appointing NAPPI and the undersigned counsel to represent the 954-Subclass previously set forth and defined above;

(ii) An award of the maximum statutory damages for NAPPI and the 954-Subclass pursuant to Fla. Stat. § 559.77(2);

- (iii) For an award of equitable relief for NAPPI and the 954-Subclass pursuant to Fla. Stat. § 559.77(2), which enjoins the Defendants from committing further violations of Fla. Stat. § 559.72(7) by leaving the violative telephone messages complained of herein;
- (iv) For a finding that the Defendants' violations of Fla. Stat. § 559.72(7) were wanton, malicious or gross, and outrageous to such an extent that the measured compensation to the NAPPI and the 954-Subclass should have an additional amount added to it by way of punitive damages pursuant to Fla. Stat. § 559.77(2) in an amount to be determined at trial;
- (v) Attorney's fees, litigation expenses, and costs pursuant to Fla. Stat. § 559.77(2); and
- (vi) For such other and further relief as may be just and proper.

VI. JURY DEMAND

Plaintiffs hereby respectfully demand that this case be tried before a Jury.

Respectfully submitted.

SCHROTH SCHROTH & MADIGAN

--and--

STERN•THOMASSON LLP

Attorneys for Plaintiffs, Michael P. Koby, Michael Simmons, Jonathan W. Supler, and Donald Nappi

DATED: September 6, 2017

By: s/ Philip D. Stern

PHILIP D. STERN

CERTIFICATE OF SERVICE

I, Philip D. Stern, hereby affirm under the penalties of perjury that on September 6, 2017, I served the within documents and all supporting papers on the Clerk of this Court using this Court's CM/ECF system. I also certify that the forgoing documents are being served this day on all counsel of record and Parties to this action in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who have not yet appeared or are otherwise not authorized to receive electronic Notices of Electronic Filing.

s/ Philip D. Stern

Philip D. Stern